

103D CONGRESS  
1ST SESSION

# H. R. 1355

To amend the Immigration and Nationality Act with respect to exclusion for admissions fraud, procedures for inspecting aliens seeking entry to the United States, and increasing penalties for certain alien smuggling.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1993

Mr. MCCOLLUM (for himself, Mr. SMITH of Texas, Mr. CANADY, Mr. BEREUTER, Mr. COMBEST, Mr. CUNNINGHAM, Mr. ARCHER, Mr. GALLEGLY, and Mr. RIDGE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act with respect to exclusion for admissions fraud, procedures for inspecting aliens seeking entry to the United States, and increasing penalties for certain alien smuggling.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Exclusion and Asylum  
5       Reform Amendments of 1993”.

1 **SEC. 2. ADMISSIONS FRAUD.**

2 (a) EXCLUSION FOR FRAUDULENT DOCUMENTS AND  
3 FAILURE TO PRESENT DOCUMENTS.—Section  
4 212(a)(6)(C) of the Immigration and Nationality Act (8  
5 U.S.C. 1182(a)(6)(C)) is amended—

6 (1) by striking “(C) MISREPRESENTATION” and  
7 inserting in lieu thereof the following:

8 “(C) FRAUD, MISREPRESENTATION, AND  
9 FAILURE TO PRESENT DOCUMENTS”;

10 (2) by adding at the end the following new  
11 clause:

12 “(iii) FRAUDULENT DOCUMENTS AND  
13 FAILURE TO PRESENT DOCUMENTS.—

14 “(I) Any alien who, in seeking  
15 entry to the United States or board-  
16 ing a common carrier for the purpose  
17 of coming to the United States, pre-  
18 sents any document which, in the de-  
19 termination of the immigration offi-  
20 cer, is forged, counterfeit, altered,  
21 falsely made, stolen, or inapplicable to  
22 the alien presenting the document, or  
23 otherwise contains a misrepresenta-  
24 tion of a material fact, is excludable.

25 “(II) Any alien who, in boarding  
26 a common carrier for the purpose of

1 coming to the United States, presents  
2 a document that relates or purports to  
3 relate to the alien's eligibility to enter  
4 the United States, and fails to present  
5 such document to an immigration offi-  
6 cer upon arrival at a port of entry  
7 into the United States, is exclud-  
8 able.”.

9 (b) AVAILABILITY OF ASYLUM AND OTHER DISCRE-  
10 TIONARY RELIEF.—

11 (1) Section 208 of the Immigration and Nation-  
12 ality Act (8 U.S.C. 1158) is amended by adding at  
13 the end the following new subsection:

14 “(e)(1) APPLICATION OF FRAUD EXCLUSION.—Not-  
15 withstanding subsection (a) and except as provided in  
16 paragraph (2), any alien who is excludable under section  
17 212(a)(6)(C)(iii) or section 212(a)(7)(A)(i) may not apply  
18 for or be granted asylum.

19 “(2) EXCEPTION.—The limitation under paragraph  
20 (1) shall not apply if the action upon which the exclusion  
21 is based was pursuant to direct departure from a country  
22 in which (A) the alien has a credible fear of persecution,  
23 or (B) there is a significant danger that the alien would  
24 be returned to a country in which the alien would have  
25 a credible fear of persecution.

1       “(3) DEFINITION.—As used in this subsection, the  
2 term ‘credible fear of persecution’ means (A) that it is  
3 more probable than not that the statements made by the  
4 alien in support of his or her claim are true, and (B) that  
5 there is a significant possibility, in light of such state-  
6 ments and of such other facts as are known to the officer  
7 about country conditions, that the alien could establish eli-  
8 gibility as a refugee within the meaning of section  
9 101(a)(42)(A).”.

10           (2) Section 212(c) of the Immigration and Na-  
11 tionality Act (8 U.S.C. 1182(c)) is amended in the  
12 third sentence by inserting before the period “or to  
13 any alien who is excludable pursuant to section  
14 212(a)(6)(C)(iii)”.

15 **SEC. 3. INSPECTION AND EXCLUSION BY IMMIGRATION OF-**  
16 **FICERS.**

17       Section 235(b) of the Immigration and Nationality  
18 Act (8 U.S.C. 1225(b)) is amended to read as follows:

19       “(b) INSPECTION AND EXCLUSION BY IMMIGRATION  
20 OFFICERS.—

21           “(1) An immigration officer shall inspect each  
22 alien who is seeking entry to the United States.

23           “(2)(A) If the examining immigration officer  
24 determines that an alien seeking entry—

1           “(i)(I) is excludable under section  
2           212(a)(6)(C)(iii), or

3           “(II) is excludable under section  
4           212(a)(7)(A)(i),

5           “(ii) does not have any reasonable basis for  
6           legal entry into the United States, and

7           “(iii) does not indicate an intention to  
8           apply for asylum under section 208,  
9           the alien shall be specially excluded from entry into  
10          the United States without a hearing.

11          “(B) The examining immigration officer shall  
12          refer to an immigration officer, specially trained to  
13          conduct interviews and make determinations bearing  
14          on eligibility for asylum, any alien who is (i) exclud-  
15          able under section 212(a)(6)(C)(iii) or section  
16          212(a)(7)(A) (i) and (ii) who has indicated an inten-  
17          tion to apply for asylum. Such an alien shall not be  
18          considered to have entered the United States for  
19          purposes of this Act.

20          “(C) An alien under subparagraph (B) who is  
21          determined by an immigration officer, specially  
22          trained to conduct interviews and make determina-  
23          tions bearing on eligibility for asylum, to be exclud-  
24          able and ineligible for the exception under section

1       208(e)(2), shall be specially excluded and deported  
2       from the United States without further hearing.

3           “(3)(A) Except as provided in subparagraph  
4       (B), if the examining immigration officer determines  
5       that an alien seeking entry is not clearly and beyond  
6       a doubt entitled to enter, the alien shall be detained  
7       for a hearing before an immigration judge.

8           “(B) The provisions of subparagraph (A) shall  
9       not apply—

10           “(i) to an alien crewman,

11           “(ii) to an alien described in paragraph  
12       (2)(A) or (2)(C), or

13           “(iii) if the conditions described in section  
14       273(d) exist.

15           “(4) The decision of the examining immigration  
16       officer, if favorable to the admission of any alien,  
17       shall be subject to challenge by any other immigra-  
18       tion officer and such challenge shall operate to take  
19       the alien, whose privilege to enter is so challenged,  
20       before an immigration judge for a hearing on exclu-  
21       sion of the alien.

22           “(5) The Attorney General shall establish pro-  
23       cedures that ensure that aliens are not specially ex-  
24       cluded under paragraph (2)(A) without an inquiry

1 into their reasons for seeking entry into the United  
2 States.

3 “(6)(A) Subject to subparagraph (B), an alien  
4 has not entered the United States for purposes of  
5 this Act unless and until such alien has been in-  
6 spected and admitted by an immigration officer pur-  
7 suant to this subsection.

8 “(B) An alien who (i) is physically present in  
9 the United States, (ii) has been physically present in  
10 the United States for a continuous period of one  
11 year, and (iii) has not been inspected and admitted  
12 by an immigration officer may be said to have en-  
13 tered the United States without inspection. Such an  
14 alien is subject to deportation pursuant to section  
15 241(a)(1)(B).”.

16 **SEC. 4. JUDICIAL REVIEW.**

17 Section 235 of the Immigration and Nationality Act  
18 (8 U.S.C. 1225) (as amended by section 3) is amended  
19 by adding after subsection (c) the following new sub-  
20 sections:

21 “(d) **HABEAS CORPUS REVIEW.**—Notwithstanding  
22 any other provision of law, no court shall have jurisdiction  
23 to review, except by petition for habeas corpus, any deter-  
24 mination made with respect to an alien found excludable  
25 pursuant to section 212(a)(6)(C)(iii) or section

1 212(a)(7)(A)(i). In any such case, review by habeas corpus  
2 shall be limited to examination of whether the petitioner  
3 (1) is an alien, and (2) was ordered excluded from the  
4 United States pursuant to section 235(b)(2).

5 “(e) OTHER LIMITS ON JUDICIAL REVIEW AND AC-  
6 TION.—Notwithstanding any other provision of law, no  
7 court shall have jurisdiction (1) to review the procedures  
8 established by the Attorney General for the determination  
9 of exclusion pursuant to section 212(a)(6)(C)(iii) or sec-  
10 tion 212(a)(7)(A)(i), or (2) to enter declaratory or injunc-  
11 tive relief with respect to the implementation of subsection  
12 (b)(2). Regardless of the nature of the suit or claim, no  
13 court shall have jurisdiction except by habeas corpus peti-  
14 tion as provided in subsection (d) to consider the validity  
15 of any adjudication or determination of special exclusion  
16 or to provide declaratory or injunctive relief with respect  
17 to the special exclusion of any alien.

18 “(f) COLLATERAL ENFORCEMENT PROCEEDINGS.—  
19 In any action brought for the assessment of penalties for  
20 improper entry or re-entry of an alien under section 275  
21 or 276, no court shall have jurisdiction to hear claims col-  
22 laterally attacking the validity of orders of exclusion, spe-  
23 cial exclusion, or deportation entered under sections 235,  
24 236, and 242.”.



1 **SEC. 5. CONFORMING AMENDMENTS.**

2 Section 237(a) of the Immigration and Nationality  
3 Act (8 U.S.C. 1227(a)) is amended—

4 (1) in the second sentence of paragraph (1) by  
5 striking out “Deportation” and inserting in lieu  
6 thereof “Subject to section 235(b)(2), deportation”;  
7 and

8 (2) in the first sentence of paragraph (2) by  
9 striking out “If” and inserting in lieu thereof “Sub-  
10 ject to section 235(b)(2), if”.

11 **SEC. 6. ENHANCED PENALTIES FOR CERTAIN ALIEN SMUG-**  
12 **GLING.**

13 Section 274(a)(1) of the Immigration and Nationality  
14 Act (8 U.S.C. 1324(a)(1)) is amended by striking “five  
15 years” and inserting “ten years”.

16 **SEC. 7. EFFECTIVE DATE.**

17 Except as otherwise provided, the amendments made  
18 by this Act shall take effect on the date of the enactment  
19 of this Act and shall apply to aliens who arrive in or seek  
20 admission to the United States on or after such date.

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